IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7473 OF 2007

Janu D. Dhanavade ..Petitioner

versus

Muktabai Balu Dhanavade ..Respondent

WITH
WRIT PETITION NO. 7486 OF 2007

Janu D. Dhanavade ..Petitioner

versus

Balu D. Dhanavade ..Respondent

Mr. S. R. Redkar for the Petitioner.

Mr. P. G. Lad for the Respondents.

CORAM : S. A. BOBDE, J.
DATE : 23RD OCTOBER, 2007.

ORAL ORDER :

. Heard. Rule.

2. Rule returnable, forthwith by consent.

3. In these writ petitions, the petitioner has prayed for two reliefs, firstly, that the earlier orders dated 8.4.2004 passed by the Small Causes

Court directing return of the plaints under Order VII Rule 10 of the Code of Civil Procedure to a proper court, be set aside. Secondly, for a direction that now the suits have been returned by the other court i.e. City Civil Court, Bombay, for presentation to the Small Causes Court, it be directed to be sent to the Appellate Bench of the Small Causes Court, Bombay.

4. The matters arise this way. Petitioner's suits were for eviction of the respondents on the ground that they were gratuitous licensee under Section 41 of the Presidency Small Causes Court Act, 1881. They were properly instituted suits according to the law in force, at that time. The Small Causes Court i.e. the trial Judge of that court decreed the suits. Against the decrees, the respondents preferred Appeal No. 438 of 1999 and 436 of 1999 to the Appellate Bench of the Small Causes Court. When the Appeals were pending there was a change in the law as a result of the Judgment of the Division Bench of this Court **[2001 (3) ALL MR 668 Ramesh Dwarkadas Mehra vs. Indravati Dwarkadas Mehra]**, wherein it was held that a suit for eviction of a gratuitous licensee, can only be instituted in the

City Civil Court, Bombay. The Appellate Bench, guided by the Judgment of the Division Bench of this Court, directed return of the plaint for presenting it to a proper court. Accordingly, the petitioner presented the suit to the City Civil Court, Bombay.

5. Then came another change in the law. The Full Bench of this Court took the view that the Division Bench in Ramesh Dwarkadas Mehra's case was wrong. The Full Bench held that the suit for eviction of gratuitous licensee must be filed before the Small Causes Court under The Presidency Small Causes Court Act, 1882, as before.

6. Because of the Judgment of the Full Bench, the petitioner made an application to the City Civil Court, Bombay, for return of the plaint to the Small Causes Court. He specifically sought for return of the plaint to the Appellate Bench wherein the suit was pending decision in the Appeals when it was returned for presentation to the City Civil Court, Bombay, in view of the Judgment of the Division Bench of this Court. The City Civil Court, Bombay, directed return of the suit to the petitioner for presentation before the Registrar of the Small

Causes Court with the observation that thereafter the parties will be subject to the jurisdiction of the Court of Small Causes. When the petitioner presented suits to the Registrar of Small Causes Court he requested that the matter be assigned to the Appellate Bench because of the stage at which the suit was pending when it was earlier, when returned for presentation. Apparently, the Registrar considering himself bound by the earlier Order of the Appellate Court directing return of the plaints, felt that he was still bound by that order and has not allotted the suits either to the trial court or to the appellate court. Hence, the petitioner has approached this Court for the two reliefs, mentioned above.

7. At the outset, there is no need to adjudicate the first relief, the petitioner is not entitled to question the orders dated 8.4.2004 by which the Appellate Court returned suits for presentation to the proper court because after said presentation, the City Civil Court, Bombay, has assumed the jurisdiction and heard the suit. The order for return of the Plaint dated 8.4.2004 has been acted upon and has worked itself out and its

correctness cannot be questioned now.

8. The other question is whether upon rejection of the plaint by the City Civil Court, Bombay, the matter should be accepted and proceeded with by the Appellate Bench of the Small Causes Court or the Trial Judge of the Small Causes Court. Order VII Rule 10 reads as follows :-

> "**10. Return of plaint.-** (1) [Subject to the provisions of rule 10-A, the plaint] shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.
>
> [Explanation.- For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint, under this sub-rule].
>
> (2) **Procedure on returning plaint.-** On returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.
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> **High Court Amendment - [Bombay].-** In Order VII, rule 10, for the existing sub-rule (1) and its marginal note, substitute the following as sub-rule (1) and marginal note.-
>
> "10. **Return of plaint.-** (1) Subject to the provisions of rule 10-A, the plaint shall be at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted. The plaintiff

> or his pleader shall be informed of the date fixed for the return of the plaint."

9. Mr. Lad, learned counsel for the respondent submitted that Rule 10 states that the suit must be presented to the court in which the suit should have been instituted. According to the learned counsel for the respondent the suits could have been instituted only at the trial stage and the suits should be presented at the trial stage only.

10. There is no doubt that Rule 10 requires that the suit should be returned for presentation to the court in which the suits should have been instituted, that court is the Small Causes Court. However, the Rule does not throw any light as to the stage at which the suit is to be proceeded with upon return, i.e. whether at the trial stage or at the appellate stage. It is therefore necessary to construe the meaning of the word "Court" occurring in Rule 10 along with the Presidency Small Causes Court Act, 1882. The Court of Small Causes is established under Section 4 of the Act. Section 4 reads as follows:

> "The Small Causes Court" means the Court of Small Causes constituted under this Act in the towns of Calcutta, Madras or Bombay as the case may be."

11. Sections 41 and 42 of the Small Causes Court Act together provide for trial of all suits and hearing of an appeal. Section 42 prescribes that an appeal shall lie from a decree or order made by the Small Causes Court to a Bench of two Judges and thus demarcates the appellate court within the Small Causes Court. The appeal is in the nature of an intra-court appeal. It is clear that the phrase "the Court in which the suit should have been instituted" must be held to mean small Causes Court as established under the Small Causes Court Act and which includes the Trial court and the appellate bench.

12. The next question is therefore as to the stage from which the petitioner’s suits should be proceeded with. In the present case, it may be remembered that the petitioner’s suits were decreed by the trial Judge of the Small Causes Court. Therefore, the respondents preferred Appeals, which were transferred because of the Judgment of the Division Bench of this Court. Clearly, the decree

was not interfered with on merits. Thereafter the suit was returned for presentation to the proper court by the Appellate Bench of the Small Causes Court. It would therefore be appropriate that on resumption of jurisdiction i.e. after this court has held that the Small Causes Court has jurisdiction to try all suits between gratuitous licensor and licensee, it would be appropriate that the matters could be taken up from the appellate stage. It is well settled position of law vide **AIR 1957 S.C. 540 Garikapati Veeraya vs. N. Subbiah Choudhry and others**, that an appeal is a continuation of the suit. Therefore, it could be well said that the suits were pending before the Appellate Bench of the Small Causes Court when they were returned for presentation to the City Civil Court, Bombay. Therefore, as observed earlier the words "Court of Small Causes" must be understood to mean the trial court as well as appellate bench of the Small Causes Court and term "Court" in Order VII Rule 10 should be construed accordingly.

13. In the circumstances, S.C. Suit No. 3010 of 2004 and S.C. Suit No. 3011 of 2004 upon return, shall be registered as Appeals by the

Registrar of the Small Causes Court, Bombay, and shall be accordingly heard and decided by the Appellate Bench of the Small Causes Court, Bombay.

14. Rule made absolute in both the Petitions accordingly.

(S.A. BOBDE, J.)